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that it is a fairly well settled position in law that actual mode of entrustment or misappropriation is not to be proved by the prosecution. Once entrustment is proved it is for the accused to prove as to how property is entrusted was dealt with.

#### Conclusion :—

So one can philosophize the whole idea in a nutshell and say that corruption is a post independence phenomenon and an intractable problem. It is like diabetes which can be controlled but not totally eliminated. It may not be possible to root out completely at all levels but it is possible to sustain it within tolerable limits. Honest and dedicated persons in public life control over electoral expenses could be most important presumption to combat corruption so corruption has a corrosive impact on our economy and it would worsen our image in

international market and lead to overseas opportunities. So, it is today a global problem that all countries in the world have to confront solution. We have tolerated it for so long the time has now come to root it out from its roots.

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### POLICE PRELIMINARY INQUIRY AND RECORDING OF FIRST INFORMATION REPORT : A STUDY IN THE LIGHT OF LALITA KUMARI v. GOVERNMENT OF UTTAR PRADESH [AIR 2012 SC 1515]

By : Prof. (Dr.) Mukund Sarda, Professor & Dean, Faculty of Law, Bharati Vidya Peeth University, New Law College, Pune

1. Sec. 154, Criminal Procedure Code,<sup>1</sup> 1974 provides for registration of cases, which can be summarised as follows:—

(i) Every information relating to the commission of a cognizable offence, if gives orally, to an officer-in-charge of a Police Station shall be reduced in writing by him or under his direction;

(ii) It is required to be signed by the persons giving it;

(iii) Substance of commission of a cognizable offence as given in writing or reduced to writing shall be entered in a book to be kept by such officer in such form as the State Government may prescribe;

(iv) Copy of the information as recorded shall be given forthwith free of cost to the informant.<sup>2</sup>

2. The purpose of registration of an FIR can be stated thus:—<sup>3</sup>

1. Criminal Procedure Code is referred to as "Cr PC" throughout this study.

2. Only relevant extract is given. For details see Sec. 154, Cr PC.

3. Supra Para 13, P. 1518.

(i) To reduce the substance of information disclosing commission of a cognizable offence, if given orally, is reduced to writing;

(ii) If given in writing, to have it signed by the complainant;

(iii) To maintain a record of receipt of information as regards the commission of a cognizable offence; and

(iv) To inform the Magistrate forthwith of the factum of the information received.

The Privy Council in Khwaza Nizam Ahmed's case<sup>4</sup> spelt out the reasons for recording an FIR thus:—

(i) In truth, the provision as to an information report (FIR) is for other reasons:—

a) To obtain early information of alleged criminal activity;

b) To record the circumstances before there is time for them to be forgotten or embellished;

c) That the report can be put in evidence when the informant is examined, if it is de-

4. Emperor v. Khwaza Nizam Ahmed, AIR 1945 PC P. 18.

sired to do so; and

d) There is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities.

A vague information or an irresponsible rumour would not by itself constitute 'information' within the meaning of Sec. 154 of the Code or the basis of investigation under Sec. 157 of Cr PC thereof.<sup>5</sup>

3. Information under Sec. 154, Cr PC serves as the basis of investigation. The main object of investigation, serves as the essential part of the duty of an investigating officer which relates to

a) Arresting the accused; after proceeding to the spot

b) To collect all material necessary for establishing the accusation against the offender;<sup>6</sup>

c) Ascertainment of the facts and circumstances of the case;

d) Examination of various persons (including the accused) and the reduction of statements into writing, if the officer thinks first;

e) To search the places for seizure of things considered necessary for the investigation and to be produced at the trial; and

f) Formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing the charge-sheet under Section 173 of Cr PC.

4. When a complaint is made to a Police-Officer in respect of a cognizable offence, whether such officer has a mandatory duty to register the complaint and issue an FIR or whether he has any discretionary power to register or not to register, and any preliminary inquiry can be conducted by the police officer to find out the truth or otherwise of the complaint, has become a subject-matter of serious judicial consideration as there is found to be a considerable cleavage of judicial opinion. There are very strong reasons to state that there is no option to the police officer but to register the complaint and issue an FIR in re-

5. H. N. Rishbud and Inder Singh v. State of Delhi, AIR 1955 SC, P. 196.

6. Ibid.

7. H. N. Rishbud (supra) P. 195.

spect of the case. Equally, there are very strong reasons not to register the case but conduct a preliminary inquiry to find out the truth of the complaint and even to refuse registration, if he is otherwise satisfied that there are no reasonable grounds to believe that the complaint is false, motivated, malicious, and to falsely implicate a person for ulterior purposes cause vexation, mental agony and to make a person suffer and to involve the person in unreasonable litigation or expose him to unwanted litigation, resulting in loss of reputation and unreasonable financial burden.

5.1. Whenever cognizable offence is disclosed, the Police Officials are bound to register the case and in case if it is not done, directions to register the same can be given.<sup>8</sup> The language used in Sec. 154, Cr PC is the determinative factor of the legislative intent, there is neither defect nor any omission in the words used by the legislature and the legislative intention admits of no other construction.<sup>9</sup> However, the judgments of the Courts are not to be construed as statutes.<sup>10</sup> Sec. 154(1), Cr PC does not admit of conferring any discretion on the officer-in-charge of the police station of embarking upon a preliminary inquiry prior to the registration of FIR and the term 'preliminary inquiry' is alien to the Cr PC.

5.2. Sec. 2 of the Cr PC refers to the following:-

- (i) Investigation
- (ii) Inquiry; and
- (iii) Trial

As such, there is no reference whatsoever to 'preliminary inquiry'.

8. Alaque Padamsee and others v. Union of India, AIR 2007 SC (Supp) P.684; Ramesh Kumari v. State (NCT of Delhi), AIR 2006 SC P.1322.

9. Hiratal Ratanlal v. State of UP, AIR 1973 SC P. 1094, B. Premchand & others v. Mohan Koikal & others, AIR 2011 SC P.1925; Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra AIR 1975 SC P.263.

10. M/s. Amar Nath Om Prakash & others v. State of Punjab, AIR 1985 SC P. 218.

11. Hameed Joharam v. Abdul Salam, AIR 2001 SC P.3404.

11. Ibid.

5.3. A reference to 'preliminary inquiry' is found in some of the departmental manuals such as CBI (crime) Manual.<sup>12</sup> Such an inquiry is contemplated when a complaint is received or information is available, which may after verification as enjoined in the said manual, indicates serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under provisions of Sec. 154, Cr PC.<sup>13</sup> The Apex Court held, 'that Sec. 154, Cr PC cannot be interpreted in terms of a Manual regulating the conduct of officers of an organisation'<sup>14</sup> ..... 'in the great majority of cases, criminal prosecutions are undertaken as the result of the information received and recorded.....'<sup>15</sup>

5.4. In order to constitute an FIR, the information must reveal commission of an act, which is a cognizable offence, and even a telephonic information about a cognizable offence, if any, irrespective of the nature and details of such information cannot be treated as an FIR.<sup>16</sup> Sec. 154, Cr PC does not require that the report must be given by a person who has personal knowledge of the incident reported..... It only speaks of an information relating to the commission of a cognizable offence given to an officer-in-charge of a police station.<sup>17</sup>

The Apex Court ruled<sup>18</sup>:-

"The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned Police Officer is empowered under Sec. 156, Cr PC to investigate. If it does, he has no option but to record the information and to

12. Chapter IX of the CBI (Crime) Manual first published in 1991 and updated on 15.9.2005, which regulates the conduct of officers of an organization like CBI.

13. Ibid. See Para 9-1 of the Manual.

14. Lalitha Kumari (supra).

15. See the ruling of the Privy Council in *Em-petor v. Khwaza Nizam Ahmed*, AIR 1945 PC 18.

16. Damodar v. State of Rajasthan, AIR 2003 SC P.4414; Ram Singh Bavaji Jaleja v. State of Gujarat, 1994 (2) SCC P.685.

17. Haller & others v. State of UP, AIR 1974 SC P.1936.

18. Superintendent of Police, CBI and others v. Tapan Kumar Singh, AIR 2003 SC P.4140.

proceed to investigate the case either himself or depute any other competent officer to conduct the investigation..... even, if the information does not give full details regarding these matters, the Investigating Officer is not absolved of his duty to investigate the case and discover the true facts, if he can".

In Ramesh Kumar's case,<sup>19</sup> the Supreme Court observed thus: "Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case..... The ground of alternative remedy not pending of the contempt petition, would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against a police officer".

In State of Haryana v. Bhajan Lal,<sup>20</sup> The Supreme Court laid down as follows:

- (i) At the stage of registration of a crime or case on the basis of information disclosing a cognizable offence in compliance with the mandate of Sec. 154(1), the Police Officer concerned cannot embark upon an enquiry as to whether information laid down by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible.....
- (ii) 'Reasonableness' or 'Credibility' of the said information is not a condition precedent for registration of a case; and
- (iii) The condition which is 'sine qua non' for recording a FIR is that

- (a) There must be an information; and
- (b) That information must disclose a cognizable offence.

The need to record an FIR with utmost despatch has been emphasised by the Apex Court. If it not done so, the following consequences result, as observed by the court:<sup>21</sup>

- (i) That there would be a great temptation to incorporate the details or circumstances advantageous to the prosecution; which may be lacking in the earlier information;
- (ii) It may benefit the wrong-doer because of afflux of time, the evidence would be obli-

19. Supra P.1322.

20. AIR 1992 SC P.604.

21. Lalitha Kumari, (supra) Para 38.

erated or destroyed, and thereby justice would be denied to the victim of the offence; and

(iii) Power is given to the police under the Cr PC to make seizure in course of investigation not during the inquiry.

This would result in disappearance of the evidence.

Further the Supreme Court pointed out,<sup>22</sup> 'that if the police is given handle to hold preliminary inquiry, the offender will get a scope to fabricate evidence, and ultimately the police will deny registration of an FIR on the ground that preliminary inquiry does not reveal any such offence having been committed at all'.

In spite of the weighty reason, the statutory duty to register an FIR when a complaint is received in respect of a cognizable offence, that the duty so cast is mandatory and gives no option to the Police Officer except to register the case.

6.1. There are several decisions to support the view that the mandatory duty to register is conditioned by several factors and circumstances. They are as follows:—

(1) In *Emperor v. Khwaza Ahmed*,<sup>23</sup> the Privy Council observed:—

(a) The receipt and recording of an information, report is not a condition precedent to the setting in motion of a criminal investigation;

(b) There is no reason, why the police, if in possession through their own knowledge, or by means of credible through informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged; and

(c) Section 157 of the Cr PC, when directing that a Police Officer, who has reason to suspect from information or otherwise, that an offence, which he is empowered to investigate under Sec. 156 has been committed, he shall proceed to investigate the facts and circumstances of the case;

6.2. The receipt of information is not a condition precedent for investigation, and in the absence of any prohibition in Cr PC, express

22. Lalitha Kumari, (supra) Para 40  
23. Supra P.18

or implied, .... it is open to a Police Officer to make a preliminary inquiry before registering an offence;....<sup>24</sup>

6.3. Where, however, a Police Officer makes some preliminary inquiry, does not arrest or even question an accused or any witnesses, but makes a few discreet inquiries or looks at some documents without making any notes, it is difficult to visualize how any possible harassment or even embarrassment would result therefrom to the suspect or the accused person.<sup>25</sup>

6.4. In *Binay Kumar Singh's case*,<sup>26</sup> it was laid down as follows:—

"The officer-in-charge of a Police Station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence".

6.5. Referring to the provisions of Sec. 190(1)(a) relating to the power of the Magistrate to deal with complaint filed before him, the Supreme Court ruled,<sup>27</sup> "the provisions of the Code, therefore, do not stand in any way of a Magistrate to direct the police to register a case at the Police Station and then to investigate into the same".

6.6. Upholding the right of the competent authority to make a preliminary inquiry, the Supreme Court observed,<sup>28</sup> '.....to make a preliminary inquiry, in a given case, in order to find out as to whether the FIR sought to be lodged had any substance or not'.

6.7. While dealing with medical negligence

24. State of UP v. Bhagwant Kishore Joshi, AIR 1964 SC P.221.

25. Bhagwant Kishore (supra) Para 18

26. Binay Kumar Singh v. State of Bihar, AIR 1997 SC P.322

27. Madhu Bala v. Suresh Kumar, AIR 1997 SC P.3104.

28. Rajinder Singh Karock v. Chandigarh Administration & others, AIR 2008 SC P.178. In this case, the Superintendent of Police, as per the directions of High Court investigated to find out the truth in the complaint, found that the complaint was false and filed with ulterior motive to take illegal possession of the first floor of the house.

cases involving doctors, the Supreme Court ruled<sup>29</sup> as follows:—

a) No medical professional shall be prosecuted merely on the basis of the allegations in the complaint; and

b) There should be an in-depth enquiry into the allegations relating to negligence, and thus necessarily postulates a preliminary inquiry before registering an FIR or before entering on investigation.

On the basis of above ruling, there is no valid reason to deny the power of the police to make preliminary inquiry in other cases as well before registering the case. Any other view, perhaps seriously violate the 'rule of law' on the ground that there is no valid reason to discriminate the doctors and others with regard to holding of a preliminary inquiry by the police.

6.8. The registration of an FIR leads to very serious consequences to the person named as an accused in the FIR, such as loss of reputation, impairment of his liberty, mental anguish and stigma attached to the arrest and subsequent investigation and trial.<sup>30</sup> There is a good reason to presume that the legislature might not have thought that the FIR would lead to such drastic consequences when the expression "shall" was used in Sec. 154(1), Cr PC recording of the FIR as mandatory.

6.9. Registering the case by a Police Officer cannot be considered as merely a 'mechanical act' as 'no administrative act can ever be a mechanical one in view of the requirement of 'rule of law'.<sup>31</sup> A power to register a case cannot be exercised arbitrarily or unreasonably.

6.10. Art. 21 of the Constitution, which guarantees the right of life and personal liberty takes a lead towards another direction. A complaint leading to mandatory registration of

case by Police,<sup>32</sup> violates Art. 21 of the Constitution. The Supreme Court observed: "In the light of Art. 21, provisions of Sec. 154, Cr PC must be read down to mean that before registering an FIR, the Station house Officer must have a prime facie satisfaction that there is commission of cognizable offence, as registration of an FIR leads to serious consequences for the person named as an accused and for this purpose, the requirement of preliminary inquiry can be spelt out in Sec. 154, Cr PC and can be said to be implicit within the provisions of Sec. 154, of Cr PC".<sup>33</sup>

6.11. Statute contemplates 'refusal by Police to register a case, when it provides a remedy to the complainant to approach the Superintendent of Police to get the complaint registered and investigated'.<sup>34</sup> This provision is sufficient to bring home the point that the Police Officer has the power to refuse registration of the complaint under Sec. 154(3), but it is silent about the reasons for refusal and circumstances under which the Police Officer may refuse to register the case.

6.12. The officer-in-charge of the Police Station is mandatorily required to register the case, irrespective of his opinion that the allegations are absurd or highly improvable, motivated etc., it would cause a serious prejudice to the person named as accused in the complaint. This would violate Art. 21 of the Constitution.<sup>35</sup>

6.13. The mandatory duty to register the case has arisen by the use of the words, "shall" in Sec. 154(1), Cr PC. However, there are some decisions to show "shall" does not convey the mandatory character of the provision, but may be construed as 'directory'.<sup>36</sup>

6.14. It was also observed<sup>37</sup>, that the non-registration of an FIR does not result in crime

32. See for details Sec. 154 (1), Cr PC.

33. Menaka Gandhi v. Union of India, AIR 1978 SC P.597; SMD Kiran Pasha v. Govt. of AP, 1990(1) SCC P.328.

34. See for details Sec. 154(3), Cr PC.

35. Lalitha Kumari (supra) Para 52.

36. P.T.Rajan v. TPM Sahir & others, AIR 2003 SC P.4603; Shivjee Singh v. Nageranda Tiwari, AIR 2010 SC P.2261; Sahananda Sonowal v. Union of India, AIR 2007 SC (Supp) 1372.

37. Lalitha Kumari (supra) Para 53.

going unnoticed or unpunished. The registration of an FIR is only for the purpose of making the information about the cognizable offence available to the Police officer and to the judicial authorities at the earliest opportunity. The delay in lodging an FIR does not necessarily result in acquittal and the delay can always be explained. This factual situation enables the Police Officer to delay the registration of the case, and the purpose of delay has to be explained. It can be inferred that the Police Officer may take time to make discreet inquiry as to the genuineness of the complaint or any offence of cognizable one has been committed.

6.15. In Animi Reddy Venkata Ramana's case,<sup>38</sup> the Supreme Court held, "when an information is received, the officer-in-charge of the Police Station is expected to reach the place of occurrence as early as possible. It is not necessary for him to take steps only on the basis of an FIR".

6.16. The duty of the Police is to protect a citizen from baseless allegations and this could be done, when Police Officer doubts the veracity of the complaint, he must hold a preliminary inquiry before deciding to record or not the complainant i.e., issuing FIR. A delicate balance has to be struck between the interests of the society / complainant and liberty of the individual, against whom the complaint is made to the Police.<sup>39</sup> This follows, that the police should not register the case mechanically and preliminary inquiry to find out whether there is a 'prime facie' case to determine whether a cognizable offence has been committed i.e., whether a prime facie case against the accused named<sup>40</sup> is made out, and not 'investigating the case substantially'.

6.17. The need for the Police officer's discretionary power to hold a preliminary inquiry can be best illustrated by Uma Shanker Sitani's case.<sup>41</sup> There are several cases of filing false

cases, due to personal, political, business rivalry, break-down of matrimonial relationships, which have become frequent. The Supreme Court referred to rapid increase in filing of cases which are not bona fide and are filled with oblique motives and observed thus: "The allegations of the complaint in such cases should be scrutinised with great care and circumspection. It is, therefore, advisable that before registering an FIR, a preliminary inquiry at least to verify the identity of the complainant and his residential address should be carried out."<sup>42</sup>

6.18. In Francis C. Mullin's case,<sup>43</sup> the Supreme Court laid down the following:—

(i) Sec. 154, Cr PC must be read in the light of Art. 21 of the Constitution;

(ii) Where a Police Officer has a reasonable doubt about the veracity of the complaint and the motives that prompted the complainant to make the complaint, he can hold a preliminary inquiry, which is a mandate of Art. 21;

(iii) If a Police Officer mechanically registers the complaint involving serious allegations, even though, he has doubts in the matter, Art. 21 would be violated.... preliminary inquiry is implicit in Sec. 154, Cr PC;

(iv) Made an unequivocal declaration of the law that any act which damages or injures or interferes with use of any limb, or faculty of a person, either permanently or even temporarily, would be within Art. 21;

(v) Every act which offends against human rights and imperils human dignity would constitute deprivation of the right to live and it would have to be in accordance with reasonable, just and fair procedure established by law, which stands the test of other fundamental Rights;

mental turmoil as not only the allegations were found false, he was arrested and had to undergo humiliation and loss of reputation.

42. Preeti Gupta & others v. State of Jharkhand and another, AIR 2010 SC P.3363. False complaints violates a person's right to life and liberty, and puts the person named in the FIR in serious jeopardy.

43. Francis C. Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC P.746.

(vi) A baseless allegation is a violation of human dignity and a Police Officer having doubts about the allegations, he being required to register an FIR, would be a clear infringement of Art. 21; and

(vii) Before registering an FIR under Sec. 154, Cr PC the Police Officer must form an opinion, whether there is a 'prime facie' case against the accused. If he does not form such an opinion and still proceeds to record an FIR, he would be guilty of an arbitrary action.

7. The non-registration of a case is not going to leave the complainant without any remedy. He can go to the Magistrate or proceed under Section 200/202 of Cr PC.<sup>44</sup>

8. Mere recording an FIR under Sec. 154, Cr PC is of no consequence. The alleged offence is to be investigated. The Police Officer may decline to carry out investigation and may come to the conclusion that there is no sufficient ground for carrying out the investigation. The Police Officer has such discretion.<sup>45</sup>

9. The officer-in-charge of the Police Station, on the basis of information received or otherwise, can start investigation, if he has reason to suspect the commission of any cognizable offence.<sup>46</sup>

10. In conclusion, the following suggestions:

44. Mona Panwar v. High Court of Allahabad, AIR 2011 SC (Cri) P.529.

45. Sec. 157(3), Cr PC.

46. State of Maharashtra v. Saranyadhar Singh Chavan, AIR 2011 SC (Cri) P.339.

## INNOCENT PUNISHED

By : S. A. Karim, Advocate, GKN Buildings, Thiruvananthapuram-35

In the 2011 April-May assembly election, one S. Prahladan was the Bahujan Samaj Party candidate from Varkala constituency. In the affidavit filed along with the nomination paper, there was no notary public stamp. It is a legal requirement. On scrutiny of the nomination papers, the returning officer rejected his nomination papers, as there was no notary public stamp in the affidavit. According to the returning officer, Prahladan's nomination paper was defective one. Prahladan challenged the rejection, before the Kerala High Court.

tions are made:

a) The expression 'may' shall be substituted for 'shall' in Sec. 154(1), of Cr PC.

b) Sec. 154(4) may be added by an amendment in the following terms:

"Notwithstanding anything contained in Sec. 154, the Police Officer, when he has reasonable grounds to suspect an offence as alleged in the complaint under Sec. 154(1) does not disclose of any cognizable offence has been committed, or doubts the bona fides of the complaint that it is either false or based on ulterior motives, he may refuse to register the case or hold a preliminary enquiry to find out whether a prime facie case is made out against the persons as alleged or direct the complainant to produce some evidence to satisfy the Police Officer about the genuineness of the complaint;

Provided, that the Police Officer shall record his reasons in writing for holding a preliminary inquiry.

Provided further that the Police Officer before holding a preliminary inquiry, shall inform a superior Police Officer not below the rank of a Deputy Supdt. of Police having jurisdiction, the reasons for holding a preliminary inquiry and take permission in writing of such officer to hold the preliminary inquiry.

Provided further any such preliminary inquiry as aforesaid, as far as possible, be completed within two weeks from the date of the receipt of the complaint by the Police Officer concerned.

Hon'ble Justice S. S. Satheesh Chandran, set aside the order rejecting the nomination paper of the BSP candidate on 21st August, 2012. The Hon'ble Judge observed, returning officer is a quasi-judicial authority and he ought to have applied judicial mind in deciding the rejection of the nomination paper. In other words, the returning officer ought not to have rejected the nomination paper.

Consequently, the Court set aside the election of Varkala Kahar, the elected candidate. There was no allegation of malpractice or dis-

39. Lalitha Kumari, (supra) Para 58  
40. Menaka (supra), P.597 and R.C. Cooper, AIR 1970 SC P.564.

41. Uma Shanker Sitani v. Commissioner of Police, Delhi 1996 (II), P.714. In this case Uma Shanker went through serious of